

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
SUBDIVISION REPORT # FPP-20-03
SUBDIVISION 294
MARCH 25, 2020

I. GENERAL INFORMATION

A. Project Description

The proposal is for preliminary plat approval of a two lot residential subdivision. The property would be served by individual septic systems and a shared well. Access would be from Wintercrest Drive.

B. Project Personnel

i. Owner/Applicant

Jeremy and Jennette Peterson
PO Box 8271
Kalispell, MT 59901

ii. Tech. Representative

Sands Surveying, Inc.
Eric Mulcahy
2 Village Loop
Kalispell, MT 59901

iii. Tech. Representative

Jere Johnson
4572 Whitefish Stage Road
Whitefish, MT 59937

C. Application Review Dates

1. Land Use Advisory Committee/Council

The proposal is not located within the jurisdiction of a land use advisory committee.

2. Planning Board

The Flathead County Planning Board will hold a public hearing on the proposed subdivision on April 8, 2020 and make a recommendation to the Flathead County Board of Commissioners. This space is reserved for a summary of the Planning Board's discussion and recommendation.

3. Commission

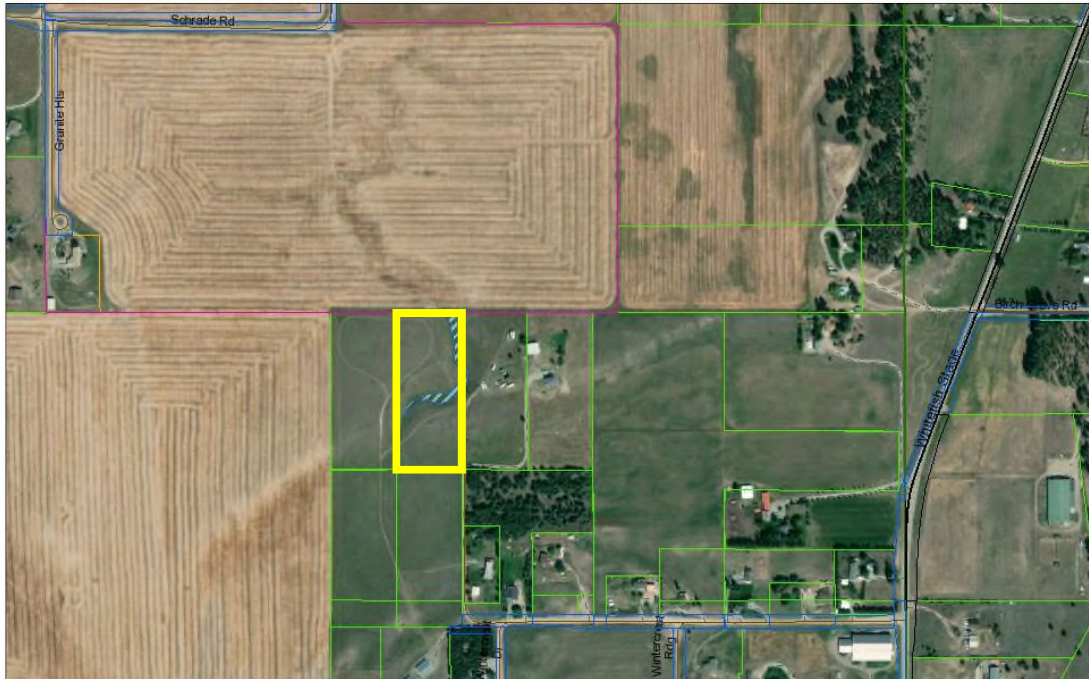
The Flathead County Board of Commissioners will review this proposal after the public hearing conducted by the Planning Board and prior to May 7, 2020 which is the end of the 60-working day statutory review period.

II. ADMINISTRATIVE CHARACTERISTICS

A. Legal Description and Detailed Location of Subject Property

The subject property is 4.996 acres in size and is located at 195 Wintercrest Drive, Kalispell, Montana. The property can legally be described as Parcel 2 of Certificate of Survey No. 21078 in the Norwest Quarter of the Southeast Quarter of Section 07, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana.

Figure 1: Aerial of subject property outlined in yellow



B. Subdivision Layout Detail

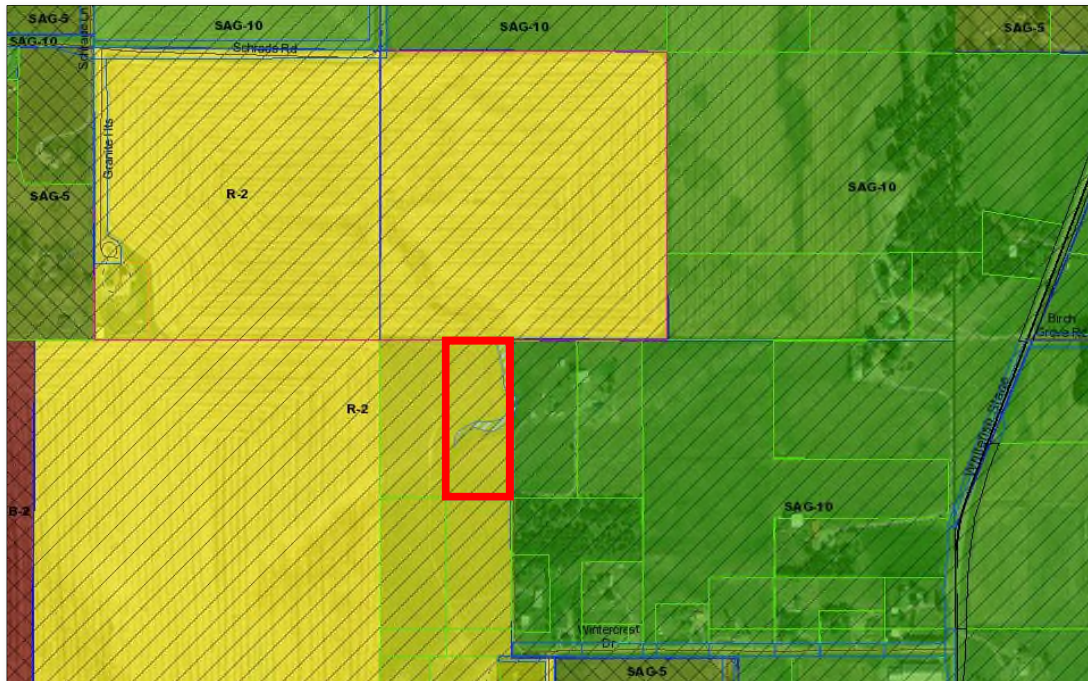
1. Total Subdivision Acreage:	4.996 acres
2. Acreage in Lots:	4.652 acres
3. Acreage in Roads:	0.344 acres
4. Total Open Space Acreage:	0.000 acres
5. Minimum Lot Size:	2.001 acres
6. Maximum Lot Size:	2.995 acres
7. Density:	1 unit per 2.498 acres

C. Current Land Use and Zoning

Located north of Kalispell City Limits and a half mile east of Highway 93, the character of the area surrounding the proposed subdivision is predominantly agricultural and suburban residential. Properties along Wintercrest Drive and Whitefish Stage consist of estate size residential development and agricultural land.

The property is currently zoned 'R-2 One Family Limited Residential' and contains a single-family dwelling and detached garage. The R-2 designation is defined as, '*A district to provide for large-tract residential development. These areas will typically be found in suburban areas, generally served by either sewer or water lines.*'

Figure 2: Surrounding zoning, subject property outlined in red



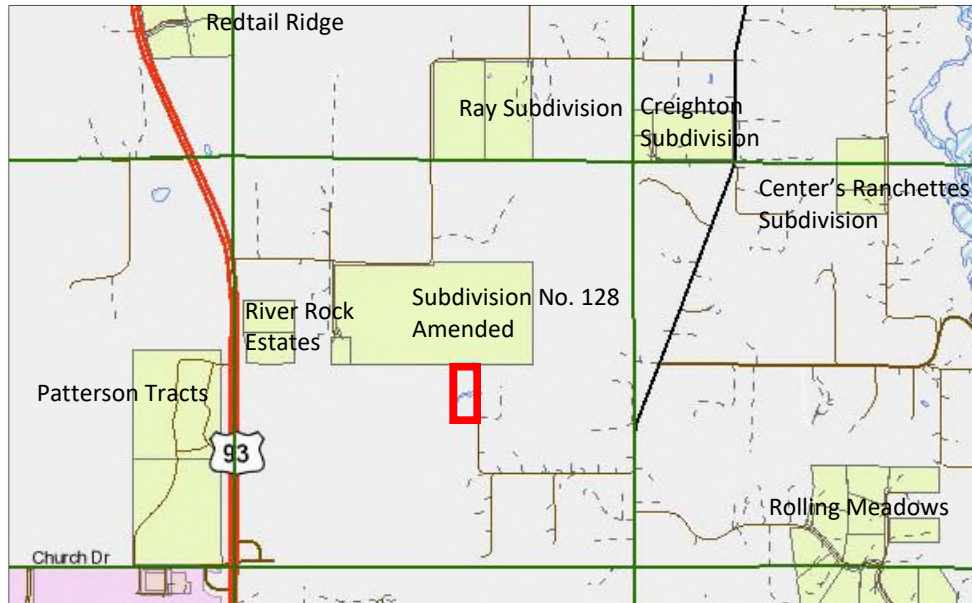
D. Proposed Land Use

The proposed subdivision would create 2 residential lots. The average lot is 2.498 acres. The applicant is proposing no common area/open space or internal subdivision roads and is requesting a variance to the roadway improvements requirement and road maintenance mechanism requirement.

E. Previously Considered Subdivisions in Area

Subdivision Name (year approved)	Type	Total Lots	Average Lot Size
Subdivision No. 128 Amd (2010)	Residential	2	40.2 acres
River Rock Estates (2004)	Residential	2	6.0 acres
Patterson Tracts (2000)	Commercial	2	40.0 acres
Rolling Meadows (1988)	Residential	13	5.6 acres
Ray Subdivision (2019)	Residential	2	20.0 acres
Creighton Subdivision (1995)	Residential	3	6.8 acres
Center's Ranchettes Subdivision (1987)	Residential	2	7.5 acres
Redtail Ridge (2019)	Industrial	4	6.0 acres

Figure 3 – Area subdivisions, subject property outlined in red



F. Utilities and Services

1. **Water** – Shared Wells
2. **Wastewater** – Individual Septic Systems
3. **Electricity** – Flathead Electric Cooperative
4. **Natural Gas** – Northwestern Energy
5. **Solid Waste** – Evergreen Disposal
6. **Telephone Service** – CenturyLink
7. **School District(s)** – Kalispell School District
8. **Fire District(s)** – West Valley Fire District
9. **Police** – Flathead County Sheriff's Department

III. COMMENTS RECEIVED

A. Agency Comments

1. Referrals were sent to the following agencies on February 6, 2020:
 - Bonneville Power Administration
 - City of Kalispell Planning Department
 - DNRC
 - Flathead County Address Coordinator/GIS Department
 - Flathead City-County Health Department – Environmental Health
 - Flathead County Road Department
 - Flathead County Sheriff's Office
 - Flathead County Solid Waste District
 - Flathead County Superintendent of Schools
 - Flathead County Weeds & Parks Department
 - Glacier High School District
 - Glacier Park International Airport
 - Kalispell School District

- Montana Fish, Wildlife & Parks
 - U.S. Army Corps of Engineers
 - West Valley Fire District
2. The following is a summarized list of agency comment received as of the date of the completion of this staff report:
- Flathead City-County Health Department – Environmental Health
 - Comment: “This proposal requires review under Sanitation in Subdivisions and is subject to review under Title 76-4, Part 1, MCA. This review addresses water supply, wastewater disposal, storm water drainage, and solid waste disposal.” Letter received February 12, 2020
 - Flathead County Solid Waste District
 - Comment: “Thank you for the opportunity to comment on the above referenced subdivision. The landfill capacity currently available is from 30 to 60 years based upon an annual tonnage increase of 2% per year respectively.
 - The District requests that all new subdivisions use a private hauler to bring solid waste to the landfill. Evergreen Disposal is the (PSC) Public Service Commission Licensed hauler in the area. Their business phone number is 406-257-1739.
 - After reviewing the project summary, I believe that FPP-20-03 Subdivision 294 is approaching solid waste disposal in an acceptable manner.” Letter received February 14, 2020
 - Flathead County Road and Bridge Department
 - Comment: “At this point the County Road Department does not have any comments on this request.” Letter received February 18, 2020
 - Bonneville Power Administration
 - Comment: “At this time, BPA does not object to this request, as the property is located 2.53 miles away from the nearest BPA transmission lines or structures.” Email received February 24, 2020
 - Flathead Municipal Airport Authority
 - Comment: “The Flathead Municipal Airport Authority (FMAA) has reviewed the preliminary plat approval of 2 residential lots at 195 Wintercrest Drive and provides the following comments:
 - Wintercrest Drive is in the Airport Affected Area near the extended runway centerline for Glacier Park International Airport (GPIA) Runway 02/20. Subsequently, current owner/s and real estate agents should disclose to prospective buyers that this property may be exposed to numerous aircraft overflights, at low altitudes, producing fumes from exhaust, dust, particles, light, vibrations, and aircraft noise.
 - Per Title 14 Code of Federal Regulations (CFR) Part 77, the property owner may be required to submit a 7460-1 Notice of Proposed Construction or Alteration via <https://oeaaa.faa.gov/oeaaa/external/portal.jsp> prior to modifying or developing the property, if such modifications penetrate an imaginary plane sloped at a ratio of 100:1 beginning at the pavement edge of the nearest runway. Any proposed heights of structures, temporary equipment, and objects of natural growth that penetrates, will require the sponsor to acquire a determination of no hazard from the Federal Aviation

Administration (FAA) pursuant to 14 CFR Part 77.13.” Letter received March 2, 2020

B. Public Comments

In accordance with Section 4.0.14 Flathead County Subdivision Regulations (FCSR), adjacent property notification was mailed to neighboring property owners within 150 feet of the proposed subdivision on March 18, 2020, legal notice was published in the Daily Interlake on March 22, and notice of the proposal and public hearing was physically posted onsite on March 25, 2020.

As of the date of the completion of this staff report, no public comments have been received regarding the proposal. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing.

IV. LOCAL GOVERNMENT REVIEW

A. Review Criteria

Findings in this portion of the report are applicable to the impacts of the proposed subdivision on the review criteria listed in Section 76-3-608(3) MCA and the review procedure outlined in Section 4.1 of the Flathead County Subdivision Regulations (FCSR), effective December 3, 2018.

1. Agriculture and Agricultural Water User Facilities

The subject property is located in an area of the County surrounded by large lot residential and agricultural uses. The Environmental Assessment (EA) states, “Historically, the subject parcel was part of a larger agricultural holding. Over the years and through a number of splits, the property is now less than five acres in size and not suitable for commercial farming but still provides space for a 4-H project and personal garden area.” Additionally, “The properties to the north are currently in agricultural production. The properties to the east, west, and south are small parcels of two to ten acres in size with some pasture and garden space. As the proposed subdivision will have lots of approximately 2 acres in size, the impacts on neighboring suburban residential/suburban agricultural uses should be minimal.”

According to the National Resources Conservation Services (NRCS) web soil survey, some soils on the subject property (Kalispell loam, 0 to 3 percent slopes) are classified as ‘prime farmland if irrigated.’ There are no shared agricultural water works, canals, irrigation ditches, or pump houses on the property and the property is not located within an agricultural water district or area.

Finding #1 – There would be minimal impact on agriculture and agricultural water user facilities as a result of the proposed subdivision because the property is not in agricultural production, has no irrigation infrastructure on site, is not in an irrigation district, and is not party to any irrigation agreements.

2. Local Services

a. Water and Wastewater Services

The proposed subdivision is not located adjacent to public water or wastewater services and instead will be served by a shared well and individual septic systems. Both lots will utilize the existing well which is currently on Lot 1. Based on the

applicant's calculations for water usage, it appears as though water rights will not be required. The EA indicates water samples collected from the subject property and a nearby well yielded sufficient water quality.

Lot 1 currently contains a septic system that was previously reviewed by the Montana Department of Environmental Quality (DEQ) to serve the existing single-family dwelling. A new individual septic system is proposed for Lot 2. The EA states, "Based on a total of two single-family lots, and a maximum peak daily wastewater flow of 350 gallons per day (gpd) per dwelling unit, the total average daily wastewater flow will be 700 gpd but keep in mind that the property is already approved for one house so the proposed subdivision is really only producing an additional 350 gallons per day with the subdivision. The test holes are dry and the non-degradation calculations indicated that these will meet the MDEQ standards."

According to the Flathead City-County Health Department, "This proposal requires review under Sanitation in Subdivisions and is subject to review under Title 76-4, Part 1, MCA. This review addresses water supply, wastewater disposal, storm water drainage, and solid waste disposal."

Finding #2 – The proposed water supply and wastewater services for the proposal appears to be appropriate because adequate water quantity appears to exist for the existing well which will be shared, and the water and wastewater systems would be required to be reviewed and permitted by the Montana Department of Environmental Quality as applicable prior to their installation and operation.

b. Solid Waste Disposal

The developer is proposing contract haul as a mechanism for solid waste disposal as requested of all subdivisions by the Flathead County Solid Waste Department. Comment from the Flathead County Solid Waste District noted that Evergreen Disposal will be the Public Service Commission (PSC) licensed hauler responsible for solid waste disposal in this area.

Finding # 3 – Impacts on solid waste disposal would be acceptable with standard conditions because the lots within the proposed subdivision would utilize contract haul services for solid waste management.

c. Roads

Primary access to the site is from Wintercrest Drive, which is a privately-maintained, gravel road within a 30-foot wide easement, adjacent to the subject property. Wintercrest Drive is accessed via Whitefish Stage, which is a MDT-maintained, paved road within a 60-foot wide easement. All lots would be accessed from Wintercrest Drive. The EA states, "Wintercrest Drive was built and constructed over a period of years throughout the gradual development of the neighboring parcels." The road is approximately 2,985 feet in length from Whitefish Stage to the shared driveway for the proposed subdivision.

According to the Institute of Transportation Engineers (ITE) *Trip Generation Manual*, single-family dwellings typically generate approximately 10 average daily trips (ADT). The proposal would create 1 additional residential lot and would therefore add approximately 10 ADT to the road network. The applicant estimated

an existing traffic count of 240 ADT based on the 24 lots that have access via Wintercrest Drive. Staff counted approximately 19 dwellings on those 24 lots, which would indicate an existing traffic count of approximately 190 ADT on Wintercrest Drive. Using these estimates, the addition of 10 vehicle trips would increase traffic by 5.3%. The applicant is requesting a variance to the road maintenance mechanism requirement of Section 4.7.15(e) and to the roadway improvement requirements of Section 4.7.17(f) FCSR, which will be assessed later in the report.

Finding #4 – Impacts on area roads would appear to be acceptable as Wintercrest Drive would provide legal and physical access to the proposed subdivision lots, the proposed subdivision has the potential to increase traffic on Wintercrest Drive by 5.3%, a road maintenance mechanism would be required unless a variance is granted, and a portion of the primary access road would be paved unless the variance to roadway improvements is granted.

d. **Schools**

The proposal is located in the Kalispell School District. According to the 2017 Census Data there are 48,741 housing units in the Flathead County. The Flathead County Statistical Report of Schools 2019 states there are 16,422 students enrolled in County schools. The total students (16,422) divided by the total households (48,741) equals approximately 0.34 students per household. Therefore, one additional lot could generate approximately 1 school age child.

The Kalispell Elementary School District has seen an 8% increase in student population in the last ten years and a 0% increase within the last two years. The Kalispell High School District has seen a 5% increase in student population in the last ten years and a 1% decrease since a peak in 2018. The school district did not provide comment regarding the proposed subdivision.

e. **Mail Delivery**

The applicant indicates mailboxes will be centralized. The developer will be required to submit plans for review and written approval from the local postmaster as a condition of preliminary plat approval.

f. **Recreation**

The proposed subdivision would create only one additional lot, thus parkland is not required per Section 4.7.24(a)(iv) of FCSR.

The Flathead County Trails Plan does not designate Wintercrest Drive as a proposed trail, thus no easement is required for a pedestrian and bicycle path.

Finding #5 – Impacts on local services with regard to schools, mail delivery and recreation would appear to be acceptable as the proposed subdivision would add approximately one student to the local school district, the applicant is proposing centralized mailboxes, and no parkland dedication would be required.

3. **Public Health And Safety**

a. **Storm Water Drainage**

According to the EA, "Runoff water from the roofs and driveways in Subdivision No. 294 will flow to a shallow retention basin designed to handle the 10-year storm.

No runoff water from new impervious or newly graded and vegetated surfaces will be discharged offsite at a greater rate than pre-development flows.”

According to the soils report, the soil types located on the subject property are not subject to ponding or flooding and are well drained. Comments from Environmental Health state, “This proposal requires review under Sanitation in Subdivisions and is subject to review under Title 76-4, Part 1, MCA. This review addresses water supply, wastewater disposal, storm water drainage, and solid waste disposal.”

Finding #6 – Impacts from storm water runoff will be acceptable because storm water generated by impervious surfaces will be accommodated via retention facilities and the proposed storm water management plan will require review and approval through the Flathead City-County Environmental Health Department and Montana Department of Environmental Quality.

b. **Fire/Emergency Medical Services**

The site is currently located within the West Valley Fire District and a fire station is located approximately 1.8 miles south of the proposed subdivision, along Whitefish Stage. The subject property is not located within the Wildland Urban Interface (WUI), Fire District Priority Area or County Wide Priority Area.

According to the EA, “Ambulance service is provided by the Evergreen Volunteer Fire Department which has a station located on Highway 2 approximately 5 miles from the subdivision.” The Kalispell Regional Medical Center provides ALERT service and is located approximately 6.5 driving miles away. Based on the location of the subdivision outside the city limits of Kalispell, emergency medical service response times are estimated to be approximately 10 minutes.

Finding #7 – Impacts on fire and medical services would be minimal with standard conditions because the subdivision would be served within an acceptable response time by the West Valley Fire District in the event of an emergency and the property is not located within the WUI.

c. **Police Services**

The property is located in an unincorporated area of Flathead County and is therefore served by the Flathead County Sheriff. The Flathead County Sheriff’s Department did not provide comment regarding the proposed subdivision. Due to the proximity to the City of Kalispell, it does not appear that delayed response times are expected.

Finding #8 – Impacts on police services would be minimal with standard conditions because the lots within the proposed subdivision would be served within an acceptable response time by the Flathead County Sheriff’s Department in the event of an emergency.

d. **Impact of Noise**

While some noise and vibration will probably result from construction, these impacts will be limited in duration and should not negatively impact the surrounding area. No noise beyond what is typical for a residential area is anticipated as a result of the proposed subdivision. The proposed residential use is

not anticipated to generate permanent continuous noise impacting area residents or wildlife.

e. **Air Quality**

Primary access to the subdivision occurs via Wintercrest Drive which is a privately-maintained, gravel road. The property is approximately a half mile from the nearest paved road. The applicant is requesting a variance to the off-site roadway improvement requirements, which will be addressed later in the report, and is proposing to enroll in the County Dust Cost Share Program as an alternative. The application states, "The applicant proposes to commit to two years of dust abatement for the entire length of Wintercrest Drive." If the variance is granted, it is recommended that the applicants be required to participate in the County's Dust Cost Share Program.

The applicant has submitted a 'Dust Control Plan' compliant with Section 4.7.14 FCSR which addresses dust related to construction. A note should be required to be placed on the face of the final plat that requires the owners of all lots abide by the guidelines set forth in the plan during and after site construction and development activities.

Finding #9 – Adverse impacts to air quality and noise are anticipated to be minimal with conditions as impacts of noise from the residential development are not expected to extend beyond property lines, a Dust Control Plan was provided to mitigate potential issues of dust during construction, and a portion of Wintercrest Drive will be required to be paved unless a variance granted.

f. **High Voltage Electric Lines/High Pressure Gas Lines**

There are no high pressure gas lines or high voltage electrical lines on the subject property.

g. **Airport Influence Areas**

The subject property is located approximately 1.8 miles from Glacier Park International Airport property. Comment received from the Flathead Municipal Airport Authority reference several concerns when a proposed subdivision is in close proximity. The comments reference the need of current owner/s and real estate agents to disclose the proximity to the airport and what the property is exposed to and the potential need to submit a 7460-1 Notice of Proposed Construction or Alteration concerning heights of structures or temporary equipment.

Finding #10 – The proposed subdivision does not appear to have an impact on public health and safety due to high voltage electric lines or high pressure gas lines because the property does not contain high voltage electric or high pressure gas lines.

Finding #11 – Risk to public health and safety appear to exist due to the close proximity of the proposed subdivision to the airport, but impacts are anticipated to be minimal because statements concerning the proximity of the subdivision to the airport will be conditioned to be placed on the final plat.

4. **Natural Environment**

a. **Soils**

According to NRCS soils data, the soils on the property are comprised of three classifications: Kalispell loam, 0 to 3 percent slopes (Ke), Kalispell loam, 7 to 12 percent slopes (Kk), and Kalispell loam, 12 to 25 percent slopes (Km). Ke makes up approximately 48% of the property and is classified as 'prime farmland if irrigated.' Kk covers approximately 0.3% of the property and Km covers approximately 51.5% of the property and both are classified as 'not prime farmland.' All three soils are not subject to ponding or flooding and are well drained.

b. Geologic/Avalanche Hazards

According to the Environmental Assessment, "The proposed development is located in an area of gently rolling terrain with no steep slopes. Even the steepest slope along the Coulee is only 12%." The property is not located on a geologic fault line. There appear to be no geological or avalanche hazards present on the subject property.

Finding #12 – No impacts from soils and geological and avalanche hazards are anticipated because the property is relatively flat and there is no evidence of unstable soils, rock outcroppings, falls or slides indicating significant geologic hazards on the property.

c. Flora

According to the EA, the property was formerly hay pasture and currently contains a single-family dwelling. The FWS National Wetlands Inventory map indicates a riverine wetland is located on the property. A Wetland Delineation Report was not required of the applicant because wetland areas are shown as a 'No Build Zone' on the preliminary plat in order to comply with Section 4.7.10(c). A search conducted by the Montana Natural Heritage Program identified this general area of the County may contain 6 plant species of concern. The species of concern in the vicinity include: Deer Indian Paintbrush, Latah Tule Pea, Spalding's Catchfly, Sparrow's-egg Lady's-slipper, Slender Cottongrass, and Short-beaked Aloe Moss. The Environmental Assessment states, "According to a search by the Montana Natural Heritage Program, there are no critical plant communities on site."

The prevention of noxious weeds is particularly important with regard to construction and development. As such, and pursuant to Section 4.7.25 FCSR, an approved weed control plan, applicable to all lots, will be required as a condition of final plat approval.

d. Riparian/Wetland Areas

The subject property does not contain any streams. The FWS National Wetlands Inventory map indicates a wetland is located on the property. The EA states, "There is a small, isolated, un-named coulee traversing the property. In the spring at the height of run-off the coulee may have some standing water in the bottom. The Flathead County GIS wetland layer shows this as being a wetland but it is barren of most riparian plants. The coulee is shown on the preliminary plat and identified with a 'no build' designation. The existing house on Lot 1 is approximately 120 feet from the edge of the coulee." Per Section 4.7.10(c) FCSR, a wetland

delineation is not required when the extent of the wetland areas is apparent and the wetland areas are designated as a 'No Build Zone' on the final plat.

e. **Floodplain**

According to FEMA FIRM Panel 30029C1415J, the subject property is mapped as unshaded Zone X. Zone X is defined as areas outside of the 0.2% annual chance flood hazard area.

Finding #13 – Adverse impacts to the natural environment as a result of the proposed subdivision are expected to be minimal because the applicant will be required to have an approved weed control plan prior to final plat approval, the subject property does not contain riparian areas and is located outside of the 0.2% annual chance flood hazard area, and impacts to wetland areas would be mitigated by a 'No Build Zone' on the face of the final plat.

5. **Wildlife and Wildlife Habitat**

The subject property is located approximately ¾ of a mile from the Kalispell City Limits and is located within an area where residential and agricultural use exist. According to the EA, the property was historically used for hay production and currently contains a single-family dwelling.

A search conducted by the Montana Natural Heritage Program identified 9 species of concern in the township and range of the proposed subdivision. The species of concern in the vicinity include: Hoary Bat, Little Brown Myotis, Grizzly Bear, Great Blue Heron, Westslope Cutthroat Trout, Pygmy Whitefish, Bull Trout, Hooked Snowfly, and Alberta Snowfly. The Bald Eagle is listed as a special species of concern. Most of these species reside in habitats not located on the subject property including streams, rivers, lakes, and forests. Wetland areas on the property would be designated as a 'No Build Zone' to mitigate potential impacts to wildlife and wildlife habitat. The Montana Department of Fish, Wildlife & Parks provided no comment regarding the proposed subdivision.

Finding #14 – The proposed subdivision is anticipated to have a minimal impact on wildlife and wildlife habitat because the property is currently developed as residential, the proposed subdivision would create only one additional lot, wetland areas would be designated as a 'No Build Zone' on the final plat, and the Montana Department of Fish, Wildlife & Parks provided no comment regarding the proposal.

6. **Historical Features**

The Environmental Assessment indicates there are no known historic, archeological, or cultural sites on the subject property.

Finding #15 – The proposed subdivision would not adversely impact historical features because there are no known known historic, archeological, or cultural sites on the subject property.

B. **Compliance with Survey Requirements of 76-3-401 through 76-3-406 M.C.A.**

Finding #16 – The preliminary plat would conform to all provisions of the Montana Subdivision and Platting Act if it contains all elements required to meet state survey requirements, which would be determined when it is reviewed by the Flathead County Examining Land Surveyor prior to final plat approval.

C. Compliance with the Flathead County Subdivision Regulations and Review Procedure

1. Requested Variances

The preliminary plat application includes a request for a variance from Sections 4.7.15(e) and 4.7.17(f) of the Flathead County Subdivision Regulations (FCSR).

Section 4.7.15(e) FCSR states, “*Subdivision roads shall be designated as public access easements and shall be shown and described as such on the face of the final plat. All subdivision roads shall be maintained by the property owners within the subdivision, unless accepted by the Commission for maintenance. The Commission accepts no responsibility for development or maintenance of roads unless accepted by the Commission for maintenance. To ensure a proper maintenance mechanism is in place, an approved Road Users’ Agreement (See Appendix K – Road User’s Agreement) or a Property Owners’ Association as part of Conditions, Covenants and Restrictions (CC&R) shall be formed which shall require each property owner to bear their pro-rata share for road maintenance within the subdivision and for any integral access roads lying outside the subdivision. Individual lots accessing internal local roads within the subdivision are granted encroachment permits upon the filing of the final plat. The road users agreement shall include a provision for a resubdivision of an existing lot within the subdivision. The Road Users’ Agreement shall be reviewed and approved by the Commission and recorded with the Clerk and Records Office as a separate document prior to or at the same time of final plat.*”

The applicant is requesting a variance to the requirement for a road maintenance mechanism. According to the application, there are 24 parcels that are accessed from Wintercrest Drive, which were created through family transfers and occasional sales and exempt from subdivision review. The application states, “Regulation 4-7-15 would require Mr. Peterson, as the first subdivision in the neighborhood, to get all 24 lot owners to agree to a Road Maintenance Agreement or assume all of the maintenance himself. There is no incentive for any of the other property owners to sign on to such an agreement so the task would be nearly impossible to meet. Assuming all of the maintenance for Wintercrest Drive with this two lot subdivision is also an unfair requirement and not proportional to the developments impact.”

Section 4.7.17(f) states, “*For a subdivision which will contribute 50 or less average vehicle trips (ADT) per day to the County road system and where the primary access to the subdivision is an existing unpaved road (either public or private), the Commission shall require the subdivider to improve and pave a portion of the road.*”

According to the Institute of Transportation Engineers (ITE) *Trip Generation Manual*, single-family dwellings typically generate approximately 10 average daily trips (ADT). The proposal would create 1 additional residential lot and would therefore add approximately 10 ADT to the road network. The applicant estimated an existing traffic count of 240 ADT based on the 24 lots that have access via Wintercrest Drive. Staff counted approximately 19 dwellings on those 24 lots, which would indicate an existing traffic count of approximately 190 ADT on Wintercrest Drive. The applicant estimates 4% of the primary access length would be required to be improved. Staff estimates for ADT would require 5% of the primary access length to be improved.

The total amount of pavement needed for the subdivision was calculated based on Section 4.7.17(i)(ii), assuming 1 new lot (2 lots from 1 existing lot).

- $[10/(10+190)]*100 = 5\%$ of Wintercrest Drive from Whitefish Stage (approximately 0.5 miles)
 $2985 \text{ feet} * 0.05 = 134 \text{ feet of paving required}$

Based on these calculations, the total paving required for the proposed subdivision would be 134 feet of Wintercrest Drive.

Subject to compliance with FCSR Section 4.0.11, the Commission shall not approve a variance unless it finds that all of the following are met:

i. The variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;

The application states, “The requirement for off-site improvements was conceived as a way to reduce air born dust generated by the County’s gravel roads. While this is a good policy in general, for small subdivisions such as this where the applicants are only creating one additional lot, the formula places a great proportion of impact on cost on the small subdivision than it would if the applicant were creating ten or twenty lots. So the reality is that this is not an evenly proportional regulation.”

Impacts to public health, safety, and general welfare as a result of not paving include issues of dust. The applicants are required to pave 5% of Wintercrest Drive and have indicated that they would provide dust abatement for the entire road for two years as an alternative to paving. Impacts to public health, safety, or general welfare could be mitigated by participating in the County’s Dust Cost Share Program or by paving the entire length of the road via a Rural Special Improvement District (RSID).

The application states, “The variance for the maintenance agreement would not jeopardize public health or safety. The one additional lot proposed by the applicant will not overburden the road. Should the variance be denied and the subdivision fails because the applicant was not able to get the neighbors to sign a maintenance agreement, Wintercrest Drive would still lack an active road maintenance agreement and the road will continue to be maintained as it always has with several of the property owners pitching in and taking care of the road.”

Without a road maintenance mechanism, property owners would not be responsible for a pro-rata share of the costs for necessary repairs or maintenance. However, impacts to public health, safety, general welfare, or adjoining properties would likely be minimal as there are currently 24 lots which are accessed via Wintercrest Drive without a road maintenance mechanism, and the proposed subdivision would only create one additional lot.

ii. Because of the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self-imposed;

The application states, “The hardship is not based on physical characteristics of the property. The hardship is based on the applicants creating a small subdivision (one additional lot) and that the property in question is a half mile from nearest paved road. It is also unfair that so many parcels have been created on this road over the last 40-years and nobody else has had to pave.” Furthermore, “The hardship of securing a Road Maintenance Agreement is not based on any physical hardship, the hardship is human nature and getting someone to sign a binding document when there is not incentive for them to do so.”

While the request for a variance to roadway improvement requirements includes some financial aspects, the unique hardship is also attributed to the history of development along Wintercrest Drive and the size of the proposed subdivision. Wintercrest Drive currently provides access to 24 lots, many of which were created exempt from subdivision review. No road improvements have been required for existing development along Wintercrest Drive. The proposed subdivision would only result in one additional lot and 10 additional vehicle trips.

The requirement for a road maintenance mechanism would require the property owner to accept responsibility for maintenance of the entire road rather than a pro-rata share since there is no obligation for other properties along Wintercrest Drive to enter into a road maintenance agreement.

iii. The variance will not cause a substantial increase in public costs, now or in the future;

The application states, “Wintercrest Drive is a private road and will never be part of the County’s road system. Therefore, maintenance and or paving of the road will not be a public taxpayer cost.” The variance requests would not cause a substantial increase in public costs, now or in the future, because Wintercrest Drive is a private road.

iv. The variance will not place the subdivision in nonconformance with any adopted growth policy, neighborhood plan or zoning regulations;

The application states, “The variance will not place this property in non-conformance with the growth policy as it is not a regulatory document. The property is zoned R-2 and the proposed subdivision complies with the minimum densities and land use.”

The requested variances would not place the property in nonconformance with a neighborhood plan or zoning regulations because the property is not located within a neighborhood plan area and there are no requirements for roadway improvements or road maintenance within the zoning regulations.

The Growth Policy discusses transportation in Chapter 6 and provides the following policies that address road improvements:

P.23.5: Protect public safety and allow safe travel by restricting development in areas without adequate road improvements.

P.24.2: Require County road improvements to mitigate impacts directly attributable to a subdivision or development as a necessary component of that development to preserve the carrying capacity of the roadway.

P.24.3: Require development projects to design road systems that complement planned land uses and maintain mobility on arterial roads and highways.

The Growth Policy also includes policies aimed at prioritizing road improvements so as to direct money and labor to only those areas that most need it. Some policies that may support maintaining gravel roads in rural areas include:

P.24.7: Develop uniform system of prioritization for road improvements and maintenance.

P.24.8: Develop a Dust Abatement Program to mitigate dust impact from traffic on county roads as funding and resources allow.

Chapter 6 of the Growth Policy outlines that the County has not accepted responsibility for maintenance of new roads for several decades due to limited resources.

v. The variance is consistent with the surrounding community character of the area.

The application states, “Most of the driveways and private roads within the Whitefish Stage neighborhood are gravel. The proposed subdivision will only create one additional lot. The subdivision and the impact are consistent with the surrounding character. Applying dust palliatives as an alternative will reduce dust to the benefit of the surrounding neighborhood.

As for the maintenance agreement, the neighborhood along Wintercrest has survived without an agreement and will continue to do so in the future. At some point in time a number of the neighbors could come together and form some kind of association but this would be a grass roots type of action and not one promoted by a single lot owner trying to subdivide his property so that his Aunt and Uncle can build a house next door.”

The variance request for roadway improvements is partially consistent with the surrounding community character of the area because Wintercrest Drive is an existing gravel road which provides access to 24 lots and the proposed subdivision would only add one additional lot to the road system. However, the area has seen development over the past few decades that would indicate the need for paved roads. Nonetheless, requiring a relatively small portion of the road to be paved may be less beneficial than maintaining the gravel road with dust suppressant or paving the entire length of the road via a RSID.

The variance to a road maintenance mechanism would be consistent with the surrounding community character of the area because there is currently no formal road maintenance mechanism in place for the existing 24 lots on Wintercrest Drive.

Finding #17 – The requested variance to the roadway improvements requirement generally meets the variance criteria because the impacts to public health, safety, or general welfare could be mitigated by participating in the County’s Dust Cost Share Program, the proposed subdivision will result in one additional lot, and requiring a relatively small portion of the road to be paved may be less beneficial than maintaining the gravel road with dust suppressant or paving the entire length of the road via a RSID.

Finding #18 – The requested variance to the road maintenance mechanism requirement generally meets the variance criteria because minimal impacts to public health, safety, general welfare are anticipated because the proposed subdivision will result in one additional lot and the requirement would impose an undue hardship on the property owner.

2. Flathead County Subdivision Review Procedure

i. Pre-application Conference Date

October 22, 2019

ii. Application Deadline Date (6 months from pre-application)

April 22, 2020

iii. Application Submittal Date

January 16, 2020

iv. Completeness Date

January 23, 2020

v. Sufficiency Date

February 6, 2020 & February 27, 2020

vi. Agency Referral Requests Mailing Date

February 6, 2020

vii. Adjacent Property Notification Mailing Date

March 18, 2020

viii. Legal Notice Publication Date

March 22, 2020

ix. On-site Posting of Public Hearing Date

March 25, 2020

Finding #19 – The proposed subdivision has been reviewed as a subsequent minor subdivision in accordance with statutory criteria and standards outlined in Section 4.3 of the Flathead County Subdivision Regulations effective December 3, 2018.

D. Provision of Easements for the Location and Installation of Planned Utilities

Finding #20 – The preliminary plat identifies adequate easements for utilities to serve the subdivision. All other easements associated with this subdivision and the subdivided property shall be clearly located on the Final Plat to satisfy applicable requirements of the Montana Subdivision and Platting Act and the Flathead County Subdivision Regulations.

E. Provision of Legal and Physical Access to Each Parcel

Primary access to the site is from Wintercrest Drive, which is a privately-maintained, gravel road within a 30-foot wide easement, adjacent to the subject property. Wintercrest Drive is accessed via Whitefish Stage, which is a MDT-maintained, paved road within a 60-foot wide easement. All lots would be accessed from Wintercrest Drive.

Finding #21 – The preliminary plat includes adequate provisions for legal and physical access to the subdivision and all lots within it because Wintercrest Drive would provide legal and physical access.

F. Review of Applicable Plans

76-1-605(2)(b) M.C.A states that “A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter.” Furthermore, 76-3-608(3) M.C.A. does not contain compliance with the growth policy as a primary criteria by which an individual subdivision proposal must undergo local government review or on which findings of fact are to be based. Review of general conformance with applicable plans is provided as an acknowledgement and consideration of the guidance offered by the information contained in the document(s).

1. Neighborhood Plan

The proposed subdivision is located in an area of Flathead County that is not within a neighborhood plan.

2. Flathead County Growth Policy

The Flathead County Growth Policy is a general policy document that meets the requirements of 76-1-601, M.C.A. and was updated on October 12, 2012. The location is in an area of the County that is designated as ‘Residential’ on the Flathead County Designated Land Use Map which is a reflection of zoning at the time the map was adopted. Regulations adopted by Flathead County used in the review of subdivisions are an implementation of the goals and policies established in the Growth Policy. This proposal conforms to the regulations used in the review of subdivision in Flathead County and is therefore in general compliance with the Flathead County Growth Policy.

Finding #22 – The proposed subdivision generally complies with the Flathead County Growth Policy because the text, goal, policies and objectives of the document generally support the request.

G. Compliance with Local Zoning

The subject property is currently zoned ‘R-2 One Family Limited Residential’. The minimum lot size within the R-2 zone is 20,000 square feet. The proposed subdivision would result in two residential lots that are greater than 20,000 square feet in size. Lot 1 is considered a ‘flag lot’ which is defined in Section 8.12.090 of the Flathead County Zoning Regulations (FCZR) as, “A lot so shaped and designed that the main building site area is set back from the street on which it fronts and includes an access strip connecting the main building site with the frontage road.” Flag lots are permitted in “R” districts if the special standards outlined in Section 5.08.010(3) FCZR are met. The proposed subdivision appears to meet the flag lot standards as the preliminary plat includes an access easement which is a minimum of 20 feet in width and a maximum of 250 feet in length and abuts a private road, the flag lot design is being utilized as a method for ‘infill’ within a developed area, and common access would be required if two flag lots are created on adjoining parcels.

Finding #23 – The proposed subdivision complies with zoning regulations as the subdivision would create two residential lots greater than the 20,000 square feet minimum lot size for the existing R-2 zoning, and the preliminary plat meets the standards for flag lots.

V. SUMMARY OF FINDINGS

1. There would be minimal impact on agriculture and agricultural water user facilities as a result of the proposed subdivision because the property is not in agricultural production,

has no irrigation infrastructure on site, is not in an irrigation district, and is not party to any irrigation agreements.

2. The proposed water supply and wastewater services for the proposal appears to be appropriate because adequate water quantity appears to exist for the existing well which will be shared, and the water and wastewater systems would be required to be reviewed and permitted by the Montana Department of Environmental Quality as applicable prior to their installation and operation. [Conditions 5]
3. Impacts on solid waste disposal would be acceptable with standard conditions because the lots within the proposed subdivision would utilize contract haul services for solid waste management. [Condition 7 & 10d]
4. Impacts on area roads would appear to be acceptable as Wintercrest Drive would provide legal and physical access to the proposed subdivision lots, the proposed subdivision has the potential to increase traffic on Wintercrest Drive by 5.3%, a road maintenance mechanism would be required unless a variance is granted, and a portion of the primary access road would be paved unless the variance to roadway improvements is granted. [Conditions 17, 18 & 19]
5. Impacts on local services with regard to schools, mail delivery and recreation would appear to be acceptable as the proposed subdivision would add approximately one student to the local school district, the applicant is proposing centralized mailboxes, and no parkland dedication would be required. [Condition 6]
6. Impacts from storm water runoff will be acceptable because storm water generated by impervious surfaces will be accommodated via retention facilities and the proposed storm water management plan will require review and approval through the Flathead City-County Environmental Health Department and Montana Department of Environmental Quality. [Conditions 5 & 12]
7. Impacts on fire and medical services would be minimal with standard conditions because the subdivision would be served within an acceptable response time by the West Valley Fire District in the event of an emergency and the property is not located within the WUI. [Condition 2]
8. Impacts on police services would be minimal with standard conditions because the lots within the proposed subdivision would be served within an acceptable response time by the Flathead County Sheriff's Department in the event of an emergency.
9. Adverse impacts to air quality and noise are anticipated to be minimal with conditions as impacts of noise from the residential development are not expected to extend beyond property lines, a Dust Control Plan was provided to mitigate potential issues of dust during construction, and a portion of Wintercrest Drive will be required to be paved unless a variance granted. [Conditions 8 & 10c]
10. The proposed subdivision does not appear to have an impact on public health and safety due to high voltage electric lines or high pressure gas lines because the property does not contain high voltage electric or high pressure gas lines.
11. Risk to public health and safety appear to exist due to the close proximity of the proposed subdivision to the airport, but impacts are anticipated to be minimal because statements

concerning the proximity of the subdivision to the airport will be conditioned to be placed on the final plat. [Condition 20(a) & 20(b)]

12. No impacts from soils and geological and avalanche hazards are anticipated because the property is relatively flat and there is no evidence of unstable soils, rock outcroppings, falls or slides indicating significant geologic hazards on the property.
13. Adverse impacts to the natural environment as a result of the proposed subdivision are expected to be minimal because the applicant will be required to have an approved weed control plan prior to final plat approval, the subject property does not contain riparian areas and is located outside of the 0.2% annual chance flood hazard area, and impacts to wetland areas would be mitigated by a 'No Build Zone' on the face of the final plat. [Conditions 3, 10(e), 16]
14. The proposed subdivision is anticipated to have a minimal impact on wildlife and wildlife habitat because the property is currently developed as residential, the proposed subdivision would create only one additional lot, wetland areas would be designated as a 'No Build Zone' on the final plat, and the Montana Department of Fish, Wildlife & Parks provided no comment regarding the proposal. [Condition 16]
15. The proposed subdivision would not adversely impact historical features because there are no known known historic, archeological, or cultural sites on the subject property.
16. The preliminary plat would conform to all provisions of the Montana Subdivision and Platting Act if it contains all elements required to meet state survey requirements, which would be determined when it is reviewed by the Flathead County Examining Land Surveyor prior to final plat approval. [Condition 11]
17. The requested variance to the roadway improvements requirement generally meets the variance criteria because the impacts to public health, safety, or general welfare could be mitigated by participating in the County's Dust Cost Share Program, the proposed subdivision will result in one additional lot, and requiring a relatively small portion of the road to be paved may be less beneficial than maintaining the gravel road with dust suppressant or paving the entire length of the road via a RSID. [Conditions 18 & 19]
18. The requested variance to the road maintenance mechanism requirement generally meets the variance criteria because minimal impacts to public health, safety, general welfare are anticipated because the proposed subdivision will result in one additional lot and the requirement would impose an undue hardship on the property owner. [Condition 17]
19. The proposed subdivision has been reviewed as a subsequent minor subdivision in accordance with statutory criteria and standards outlined in Section 4.3 of the Flathead County Subdivision Regulations effective December 3, 2018. [Condition 14]
20. The preliminary plat identifies adequate easements for utilities to serve the subdivision. All other easements associated with this subdivision and the subdivided property shall be clearly located on the Final Plat to satisfy applicable requirements of the Montana Subdivision and Platting Act and the Flathead County Subdivision Regulations. [Condition 11]

21. The preliminary plat includes adequate provisions for legal and physical access to the subdivision and all lots within it because Wintercrest Drive would provide legal and physical access.
22. The proposed subdivision generally complies with the Flathead County Growth Policy because the text, goal, policies and objectives of the document generally support the request.
23. The proposed subdivision complies with zoning regulations as the subdivision would create two residential lots greater than the 20,000 square feet minimum lot size for the existing R-2 zoning, and the preliminary plat meets the standards for flag lots. [Condition 20(c)]

VI. CONCLUSION

In accordance with the provisions of Section 4.4 of the Flathead County Subdivision Regulations, a review and evaluation of the major subdivision application has been completed by the staff of the Flathead County Planning and Zoning Office. The proposed subdivision appears to generally comply with the subdivision review criteria, pursuant to the Findings of Fact. Should the Planning Board forward a recommendation of approval of this subdivision to the Flathead County Commissioners, Findings of Fact and Conditions of Approval attached should be adopted.

VII. CONDITIONS OF APPROVAL

A. Standard Conditions

1. The developer shall receive physical addresses in accordance with Flathead County Resolution #1626. All road names shall appear on the final plat. Street addressing shall be assigned by Flathead County. [Sections 4.7.16(g)(iv), 4.7.26(c) FCSR]
2. The developer shall comply with reasonable fire suppression and access requirements of the West Valley Fire District. A letter from the fire chief stating that the plat meets the requirements of the Fire District (or Department) shall be submitted with the application for Final Plat. [Section 4.7.26(b) FCSR and Finding of Fact (FOF) 7]
3. All areas disturbed during development of the subdivision shall be re-vegetated in accordance with an approved Weed Control Plan and a letter from the County Weed Supervisor stating that the Weed Control Plan has been approved shall be submitted with the final plat. [Section 4.7.25 FCSR and FOF 13]
4. All utilities shall be extended underground to abut and be available to each lot, in accordance with a plan approved by the applicable utility providers. [Section 4.7.23 FCSR]
5. The proposed water, wastewater treatment, and stormwater drainage systems for the subdivision shall be reviewed, approved, and permitted as applicable by the Flathead City-County Health Department, and approved by the Montana Department of Environmental Quality. [Sections 4.7.20, 4.7.21 FCSR and FOF 2, 6]
6. The mail delivery site shall be provided with the design and location approved by the local postmaster of USPS. A letter from the postmaster stating that the developer has met

their requirements shall be included with the application for final plat. [Section 4.7.28 FCSR and FOF 5]

7. In order to assure the provisions for collection and disposal of solid waste, the developer shall submit a letter from the applicable solid waste contract hauler stating that the hauler is able to provide service to the proposed subdivision. [Section 4.7.22 FCSR and FOF 3]
8. The owners shall abide by the guidelines set forth in the approved Dust and Air Pollution Control and Mitigation Plan during and after site construction and development activities. [Section 4.7.14 FCSR and FOF 9]
9. All road names shall be approved by the Flathead County Address Coordinator and clearly identified and house numbers will be clearly visible from the road, either at the driveway entrance or on the house. House numbers shall be at least four inches in length per number. [Section 4.7.26(c) FCSR]
10. The following statements shall be placed on the face of the final plat applicable to all lots:
 - a. All road names shall be assigned by the Flathead County Address Coordinator and clearly identified and house numbers will be clearly visible from the road, either at the driveway entrance or on the house. House numbers shall be at least four inches in length per number. [Section 4.7.26(c) FCSR]
 - b. All utilities shall be placed underground. [Section 4.7.23 FCSR]
 - c. The owners shall abide by the guidelines set forth in the approved Dust and Air Pollution Control and Mitigation Plan during and after site construction and development activities. [Section 4.7.14 FCSR and FOF 9]
 - d. Solid waste removal for all lots shall be provided by a contracted solid waste hauler. [Section 4.7.22 FCSR and FOF 3]
 - e. Lot owners are bound by the Weed Control Plan to which the developer and the Flathead County Weed Department agreed. [Section 4.7.25 FCSR and FOF 13]
11. The final plat shall comply with state surveying requirements. [Section 76-3-608(b)(i) M.C.A. and FOF 16, 20]
12. Where the aggregate total disturbed area of any infrastructure construction in the proposed subdivision as defined in A.R.M. 17.30.1102(28) is equal to, or greater than one acre; or where when combined with subsequent construction of structures such disturbed area will be equal to, or greater than one acre, a Montana State Department of Environmental Quality (DEQ) General Permit for Stormwater Discharges Associated with Construction Activity (General Permit) shall be obtained prior to any site disturbance or construction and a copy of the DEQ confirmation letter shall be provided to the Flathead County Planning & Zoning office prior to final plat approval. [17.30.1115 Administrative Rules of Montana (A.R.M.) and FOF 6]
13. All required improvements shall be in place or a Subdivision Improvement Agreement shall be provided by the subdivider prior to final approval by the County Commissioners. [Section 4.0.16 FCSR]

14. The final plat shall be in substantial compliance with the plat and plans submitted for preliminary plat review, except as modified by these conditions. [Section 4.1.13 FCSR and FOF 19]
15. Preliminary plat approval is valid for three years. The final plat shall be filed prior to the expiration of the three years. Extension requests to the preliminary plat approval shall be made in accordance with the applicable regulations and following associated timeline(s). [Section 4.1.11 FCSR]

B. Project-Specific Conditions

16. The boundaries of the wetland shown on the preliminary plat shall be labeled as a 'No Build Zone' on the face of the final plat. [Section 4.7.10 FCSR and FOF 13, 14]
17. Unless a variance is granted, the developer shall provide a compliant Road Users' Agreement or CC&R document which requires each property owner to bear his or her pro-rata share for maintenance of the roads within the subdivision and for any integral access roads lying outside the subdivision. [Section 4.7.15(e) FCSR and FOF 4 & 18]
18. Unless a variance is granted, the developer shall pave 134 feet of Wintercrest Drive, which shall be certified by a licensed engineer and constructed and paved in accordance with the Flathead County Minimum Standards for Design and Construction, as applicable. [Sections 4.7.16, 4.7.17 FCSR, FOF 4 & 17]
19. If the variance to off-site roadway improvement is granted, the developer shall provide documentation that they have applied for and have been included in the Flathead County Cost Share Dust Control Program [FOF 4, 17]
20. The following statements shall be placed on the face of the final plat applicable to all lots:
 - a. This property may be exposed to aircraft overflights, at low altitudes, producing fumes from exhaust, dust, particles, light, vibrations, and aircraft noise. [FOF 11]
 - b. Per Title 14 Code of Federal Regulations (CFR) Part 77, the property owner may be required to submit a 7460-1 Notice of Proposed Construction of Alteration prior to modifying or developing the property, if such modifications penetrate an imaginary plane sloped at a ratio of 100:1 beginning at the pavement edge of the nearest runway. Any proposed heights of structures, temporary equipment, and objects of natural growth that penetrates, will require the sponsor to acquire a determination of no hazard from the Federal Aviation Administration (FAA) pursuant to 14 CFR Part 77.13. [FOF 11]
 - c. If two flag lots are created on adjoining parcels, shared access shall be required when possible. Common access shall be created for both parcels by relocating existing driveway, if necessary. [Section 5.08.010(3)(F), FCZR and FOF 23]

Planner: EA